

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

In the Matter of )

Numbering Resource Optimization ) CC Docket No. 99-200  
)

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**OPPOSITION TO AND SUPPORT FOR  
PETITIONS FOR RECONSIDERATION**

The Personal Communications Industry Association ("PCIA"),<sup>1</sup> by its attorneys, respectfully submits the following responses to certain aspects of the petitions for reconsideration filed by the California Public Utilities Commission ("CPUC"), the Maine Public Utilities Commission ("MPUC"), and the Public Utilities Commission of Ohio ("PUCO") of the *Report and Order* released on March 31, 2000 in the above-captioned proceeding.<sup>2</sup> As explained in more detail below, the FCC should deny certain aspects of these petitions for reconsideration in order to maintain the proper balance between federal control of numbering administration and state oversight of local issues, to ensure that disaggregated, carrier-specific numbering utilization data is adequately protected by confidentiality safeguards, and to preserve the integrity of the INC Guidelines.

<sup>1</sup> PCIA is an international trade association established to represent the interests of the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Alliance, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance.

<sup>2</sup> *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 00-104 (rel. March 31, 2000) ("*Report and Order*").

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List A B C D E

**I. THE FCC SHOULD MAINTAIN THE BALANCE BETWEEN FEDERAL CONTROL OF NUMBERING ADMINISTRATION AND STATE OVERSIGHT OF LOCAL ISSUES IT STRUCK IN THE *REPORT AND ORDER***

PCIA believes that, in most respects, the *Report and Order* strikes the proper balance between the need for federal control of numbering administration and the need for state control or oversight of local issues. Most of the petitions for reconsideration are consistent with this view, and the majority of the requested clarifications and modifications would strengthen the framework and balance that the FCC established in the *Report and Order*. Even the petitions for reconsideration filed by the CPUC, MPUC and PUCO seek to amend specific aspects of the FCC's rules rather than overturn the balance between federal and state authority that the *Report and Order* establishes. PCIA urges the FCC to maintain this balance when reviewing the requests for clarifications of, or changes to, specific aspects of the FCC's rules that the petitions for reconsideration seek.

Some of the issues raised in the petitions have since been clarified by the FCC. For example, on July 18, 2000, the FCC entered into a Letter Agreement with NeuStar, Inc., which contains responses to questions that NeuStar had asked the FCC.<sup>3</sup> In this Letter Agreement, the FCC clarified that carriers have six months from the code effective date to return the Part 4 Form. If a carrier does not file the Part 4 Form, the NANPA must begin the reclamation process within 60 days after the end of the six-month period.<sup>4</sup> PCIA respectfully submits that this clarification addresses the concerns relating to the ambiguity of "activation deadline" that ALTS, BellSouth, PCIA, Verizon Wireless, Winstar, and WorldCom raised in

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<sup>3</sup> Letter Agreement 1 between Andrew S. Fishel, Managing Director, FCC, and Gregory J. Roberts, Vice President, Numbering Services, NeuStar, Inc. at Attachment 1, page 4 (dated July 18, 2000).

<sup>4</sup> *Id.*

their petitions.<sup>5</sup> Nonetheless, PCIA urges the FCC to confirm this clarification by adopting the language that PCIA suggested in its petition for reconsideration.<sup>6</sup>

The FCC has also released FCC Form 502, which clarifies other issues raised in the petitions for reconsideration. Specifically, FCC Form 502 makes clear that intermediate numbers are excluded from the denominator of the utilization formula. This partially addresses the issues about the utilization formula that ALTS, BellSouth, SBC Communications, Verizon, and Verizon Wireless raised in their petitions.<sup>7</sup> For the same reasons that intermediate numbers are properly excluded from the denominator of the utilization formula, aging, administrative, and reserved numbers should either be excluded from the denominator of the utilization formula or included within the numerator.<sup>8</sup> The current formula does not represent a carrier's actual number usage, because aging, administrative and reserved numbers are not available for assignment to end users. Excluding these numbers from the denominator or including them within the numerator will more accurately reflect a carrier's utilization rate and create incentives for carriers to utilize numbering resources more efficiently.<sup>9</sup>

In any event, the FCC should not rely solely upon specific percentage utilization thresholds for awarding growth codes, as many of the petitions demonstrate.<sup>10</sup> Specific percentage utilization thresholds are discriminatory and would result in some carriers being denied numbering resources despite genuine need, as PCIA, ALTS, BellSouth, Verizon Wireless,

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<sup>5</sup> See ALTS Petition at 2-5; BellSouth Petition at 24-25; PCIA Petition at 7-10; Verizon Wireless Petition at 11-12; Winstar Petition at 2-9; WorldCom Petition at 8, 10.

<sup>6</sup> See PCIA Petition at 7-10.

<sup>7</sup> See ALTS Petition at 6; BellSouth Petition at 11-15; SBC Communications at 7-8; Verizon Petition at 5-6; Verizon Wireless Petition at 1-5.

<sup>8</sup> See *id.*

<sup>9</sup> See, e.g., Verizon Wireless Petition at 1-5.

<sup>10</sup> See, ALTS Petition at 7; BellSouth Petition at 17-20; PCIA Petition at 3-6; Verizon Wireless Petition at 25-26; VoiceStream Petition at 9-16.

VoiceStream and others have demonstrated in their petitions for reconsideration, comments and reply comments.<sup>11</sup> Put simply, it is impossible to select a rational and non-discriminatory “one-size-fits-all” utilization threshold because thresholds merely provide a “snapshot” of numbering utilization that does not directly relate to projected exhaust.<sup>12</sup> Therefore, PCIA urges the FCC instead to rely on MTE Worksheets, which do not result in discrimination because they directly reflect the confluence of an individual carrier’s growth rate, based on actual historical data and documented growth projections, and the customary length of time between a request for a code and activation of that code throughout the network.<sup>13</sup>

On July 20, 2000, the Common Carrier Bureau released an order that addressed the petitions for additional delegated authority to implement numbering resource optimization strategies filed by various state utility commissions.<sup>14</sup> In this order, the Bureau denied the Pennsylvania Commission’s request for authority to implement service- and technology-specific overlays.<sup>15</sup> For the same reasons, the FCC should deny the PUCO’s request in its petition for reconsideration for additional authority to consider service- and/or technology-specific overlays.<sup>16</sup>

When addressing the remaining issues raised in the petitions for reconsideration, the FCC should ensure that it does not grant any petition that would result in a myriad of

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<sup>11</sup> See, e.g., *id.*

<sup>12</sup> See PCIA Petition at 3-6.

<sup>13</sup> For the same reasons, the FCC should deny the MPUC’s request that the FCC apply a 75 percent utilization rate requirement to all pooling carriers’ requests for growth codes. MPUC Petition at 3-5.

<sup>14</sup> See *Numbering Resource Optimization*, Order, CC Docket Nos. 99-200 & 96-98, NSD File Nos. 99-100, 00-16, 99-98, 99-82, 99-96, 00-08, 99-102, 99-95, 99-89, 99-94, 99-101, 99-90, 99-83, 99-97 and 00-29, DA 00-1616 (July 20, 2000) (“*State Delegation Order*”).

<sup>15</sup> See, e.g., *id.* (explaining that the issue of service- and technology-specific overlays may be addressed in subsequent stages of the Numbering Optimization Measures proceeding).

<sup>16</sup> PUCO Petition at 19-20.

different numbering regulations, standards, and enforcement schemes. Among other things, the FCC should deny the petition of the CPUC requesting that all states be granted the authority to order non-compliant wireline carriers to deploy LNP.<sup>17</sup> The FCC is the proper agency to enforce the federal numbering rules, and delegation of enforcement authority over federal LNP rules to state commissions would result in unnecessary balkanization. There is no reason to vary the FCC's LNP rules to account for local issues, and thus there can be no justification for state enforcement of LNP rules. If a state commission learns that a carrier is not in compliance with the FCC's rules on LNP, the state commission should alert the FCC, which could then investigate the carrier to determine whether enforcement actions are appropriate.

Finally, the FCC should clarify that number rationing is incompatible with the federal numbering policies, rules and guidelines. As Sprint explains in its petition for reconsideration, there is no reason to permit rationing anywhere or anytime under the new numbering administration framework.<sup>18</sup> If rationing is permitted under the new framework, it is almost guaranteed that carriers with a documented need for numbers will not receive them when needed. By taking this opportunity to reaffirm that number rationing should be the rare exception, rather than the rule, the FCC would strengthen the national framework for numbering administration that it established in the *Report and Order*.

## **II. THE FCC SHOULD ENSURE THAT DISAGGREGATED, CARRIER-SPECIFIC NUMBERING UTILIZATION DATA IS PROTECTED BY ADEQUATE CONFIDENTIALITY GUARANTEES**

In its petition for reconsideration, the PUCO submits that the *Report and Order* does not sufficiently detail the confidentiality guarantees that must be in place before state

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<sup>17</sup> CPUC Petition at 14-15.

<sup>18</sup> Sprint Petition at 16.

commissions have access to disaggregated, carrier-specific numbering utilization data.<sup>19</sup> PCIA agrees with the PUCO that the FCC should clarify the confidential treatment that states must guarantee before they are allowed to receive numbering utilization data from NANPA.<sup>20</sup> It is crucial that no disaggregated, carrier-specific data be released to any party, including a state commission, who cannot guarantee confidential treatment of that data.

The potential harm that could result from the disclosure of disaggregated, carrier-specific data is significant and irremediable. Carriers do not currently report subscribership by discrete geographic areas under any circumstances of which PCIA is aware. For example, wireless carriers provide subscriber data in their SEC filings on an aggregated basis from the entire United States, not on a state-by-state or rate center-by-rate center basis. Information of this level of granularity is highly confidential, and is made available even within the companies on a highly confidential basis only to those with an absolute need to know. Moreover, both current subscribership levels and trends in subscribership are valuable competitively, and thus influence Wall Street and stock values. A carrier could be irreparably harmed if such sensitive data falls into the hands of its competitors, and shareholders and the company itself could be harmed if insider trading occurs based on some individuals' access to confidential information that is not yet available to the general public. In order to prevent these and other types of serious, and in some cases criminal, abuses from occurring, the FCC should establish clear guidelines to ensure that adequate confidentiality safeguards are in place throughout the nation. Therefore, PCIA urges the FCC to clarify the confidentiality safeguards that must be in place before states or other third parties are eligible to receive disaggregated, carrier-specific data.

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<sup>19</sup> PUCO Petition at 10-13.

<sup>20</sup> *Id.*

PCIA also supports the confidentiality measures that Verizon Wireless proposes in its petition for reconsideration.<sup>21</sup> In its petition, Verizon Wireless urges the FCC to: (1) require states seeking confidential data to certify acceptance of the FOIA obligation to protect trade secrets; (2) review state procedures to ensure protection of confidential information; and (3) consider and rule upon requests by the public for access to confidential documents in accordance with the FCC's responsibility for carrying out the requirements of FOIA, with the state bound by the FCC's requirements.<sup>22</sup> PCIA submits that these are the minimum steps necessary to ensure that sensitive information is adequately protected from improper disclosure.

For similar reasons, the FCC should not expand the scope of disaggregated, carrier-specific data that NANPA must provide to state commissions pursuant to the *Report and Order* as the CPUC requests in its petition.<sup>23</sup> In fact, PCIA respectfully submits that the state commissions should be able to perform all of their duties under the FCC's numbering rules with aggregated utilization data. Aggregated utilization data is more than sufficient to allow states to predict the need for, and implement, area code relief, and thus there is no need for states to have access to disaggregated, carrier-specific data submitted on FCC Form 502. Moreover, state commissions have no need for disaggregated, carrier-specific data associated with applications for growth codes, because state commissions do not have the duty, or the authority, to review applications for growth codes in the first instance. Rather, state commissions have the authority to affirm or overturn decisions by the NANPA to deny the application of a particular carrier. Under those circumstances, the appealing carrier can submit data as necessary to support its appeal pursuant to adequate confidentiality agreements. Consequently, PCIA urges the FCC to

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<sup>21</sup> See Verizon Wireless Petition at 18-21.

<sup>22</sup> *Id.*

<sup>23</sup> CPUC Petition at 7-14.

deny the petitions of the CPUC, PUCO and MPUC to the extent that they request access to disaggregated, carrier-specific data<sup>24</sup> or the authority to collect such data independently.<sup>25</sup>

### **III. THE FCC SHOULD MAINTAIN THE CURRENT PROCEDURES FOR ADOPTING INC GUIDELINES**

In its petition for reconsideration, the MPUC asks the FCC to require regulatory review of the INC Guidelines by a joint federal and state committee before they are given the effect of law.<sup>26</sup> PCIA respectfully submits that the MPUC has misconstrued the role of the INC Guidelines in the federal framework. Contrary to the allegations of the MPUC, it is entirely appropriate that the industry and the PA follow the INC Thousand Block Pool Administration Guidelines, adopted pursuant to the current INC procedures.

The MPUC implies that the industry could collude to change the INC Guidelines at any time to their advantage in ways that would not serve the public interest.<sup>27</sup> This suggestion is simply untrue as a factual matter. The nature of the INC Guidelines is not such that changes in it would directly benefit industry members or harm the public interest, and INC procedures do not facilitate such changes. Even if the INC Guidelines would facilitate this result in theory, as a practical matter the interests of various industry members are so diverse that it is unrealistic to expect the kind of consensus that would allow swift changes that favor the industry and disfavor the public interest. Moreover, members of the public, including state commissions, are free to attend and participate in any INC meeting provided that they share in the cost of the meetings. It is no justification to impose joint federal and state oversight merely because some state commissions submit that they do not have adequate resources to attend.

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<sup>24</sup> *Id.*: PUCO Petition at 10-13; MPUC Petition at 11-13.

<sup>25</sup> PUCO Petition at 5-10.

<sup>26</sup> MPUC Petition at 7-10.

<sup>27</sup> *Id.* at 7.



Perhaps most importantly, if the MPUC or anyone else disagrees with a guideline that the INC has adopted, it can ask the FCC to “overrule” the guideline by issuing an order or initiating an rulemaking proceeding to consider new rules that would supersede the guideline. Therefore, the MPUC’s proposal would unnecessarily add another level of bureaucracy to numbering administration and create yet another entity to consider numbering issues. PCIA submits that the MPUC’s proposal, although well intended, is simply a bad idea.

In any event, a petition for reconsideration is not the procedural vehicle for considering the MPUC’s proposal. The MPUC has not requested that the FCC reconsider any of the specific rules adopted in the *Report and Order*. Rather, the MPUC has proposed a new and independent rule without notice and comment that the Administrative Procedure Act requires.<sup>28</sup> Therefore, PCIA urges the FCC to deny MPUC’s petition for reconsideration.

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<sup>28</sup> See 5 U.S.C. §§ 552, 553.

#### IV. CONCLUSION

For the foregoing reasons, the FCC should deny certain aspects of the petitions for reconsideration filed by the CPUC, MPUC and PUCO.

Respectfully submitted,

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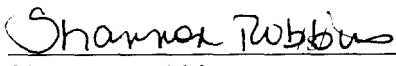
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